Empire Holdings Ltd v Tetuan Tommy Thomas (a legal firm)

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-17D-5–02 OF 2022
AMARJEET SINGH J
14 SEPTEMBER 2023

Legal Profession — Bill of costs — Taxation — Whether parties had agreed on the fees — Whether ss 116 and 117(3) of Legal Profession Act 1976 ('LPA') applied — Whether time-bar had set in to disentitle client from obtaining order to tax the bill of costs — Whether client had shown special circumstances under s 128 LPA to allow time to be extended for bill to be taxed — Whether all circumstances of case including factors stated in r 11 of Legal Profession (Practice and Etiquette) Rules 1978 showed that solicitor's bill was not exorbitant or unreasonable

The plaintiff had engaged the services of the defendant ('the firm') to prevent the purported sale of the plaintiff's shares in a company. In view of the gravity, complexity and urgency of the matter, the plaintiff had agreed to pay the hourly rates that would be charged by two senior lawyers and a junior counsel of the firm to handle the litigation for the plaintiff. Upon the plaintiff's payment of a deposit, the firm set about doing all things necessary to protect the plaintiff's interest including the obtaining of an interim injunction. When the interim injunction was set aside at an inter partes hearing, the firm was instructed to appeal against the decision to the Court of Appeal ('COA'). After the firm had, inter alia, filed the necessary documents to institute the appeal and secured undertakings from all relevant parties to preserve the status quo of the suit until the appeal was disposed of, the plaintiff decided to appoint a new firm of solicitors to take over the matter from the firm and to handle the appeal. the firm had no objections to the move provided its legal fees were settled. In total, the firm issued four invoices ('the invoices') to the plaintiff in respect of its fees. The plaintiff filed the instant originating summons ('OS') for an order that the invoices be taxed by the court under s 126 of the Legal Profession Act 1976 ('the LPA') on the grounds that, inter alia: (a) the amount charged under the invoices was unreasonable and exorbitant; (b) the invoices did not give adequate information for the plaintiff to understand what were the services that were rendered; and (c) the terms of engagement of the firm only mentioned the hourly rates for three lawyers of the firm, but the invoices included the hourly rates of six more persons which the plaintiff had never agreed to. The firm opposed the OS on the grounds that: (i) the invoices were issued pursuant to an agreement on fees under s 116 of the LPA and therefore, pursuant to s 117(3) of the LPA, the invoices were not subject to taxation; (ii) the first and second invoices were delivered to the plaintiff more than six months before the OS was filed, hence, pursuant to s 126 of the LPA, the

plaintiff could not seek an order for taxation of those invoices as a matter of course; (iii) the fees charged in the invoices were adequately itemised and was not unreasonable or disproportionate to the work done; and (iv) the plaintiff had never at any time protested against the legal fees stated in the invoices.

Held, dismissing the OS:

(1) The terms of engagement showed that only three identified lawyers of the firm would be charging hourly rates for their work. The invoices, however, included other lawyers charging their own hourly rates. This was not agreed to by the plaintiff. It was a clear breach of the terms of engagement. Further, and most crucially, the terms of engagement that was relied upon by the firm was not the entire agreement between the parties on the legal fees. As such, s 116 read with s 117(3) of the LPA did not apply. The invoices were certainly not based on any clear agreement on the fees between the parties (see paras 21–22).

(2) The plaintiff had furnished extraordinarily good reason for the court to extend time under s 128 of the LPA to allow the first and second invoices to be taxed. The invoices were interconnected for continuous work done arising from the same dispute and the work done for the second invoice onwards was really in relation to the interim injunction that was dismissed by the High Court and the appeal and the connecting applications arising therefrom. Thus, the six months ought to run from the date the final invoice was delivered to the plaintiff (see para 26).

(3) At the material time, the Court of Appeal had already set the date for written submissions to be filed. The plaintiff's focus was to settle all payments without delay so that its new solicitor could prepare for the appeal. The payment was made without objection so that the file and all cause papers and documents could be transferred to the new solicitor without delay so that they could get down to work, settle the appeal record and matters connected therewith including preparing for the appeal. This amounted to an extraordinarily good reason for time to be extended (see para 27).

(4) This court found that the invoices were itemised and very detailed where every item of work was listed including the time that each lawyer had spent on each item of work as well as the specific sums incurred for disbursements and taxes. The invoices were also in accordance with r 11 of the Legal Profession (Practice and Etiquette) Rules 1978. Having considered the special position and seniority of counsel from the firm who appeared for the plaintiff, the novel points of law said to have been raised and the tremendous amount of work done in an extremely short period of time, the court was unable to say that the legal fees charged by the firm was exorbitant or unreasonable in the circumstances. For that reason alone, the plaintiff's OS was dismissed (see paras 28–29).

[Bahasa Malaysia summary

Plaintif telah menggunakan perkhidmatan defendan ('firma') untuk menghalang penjualan saham plaintif dalam sebuah syarikat. Memandangkan keseriusan, kerumitan dan desakan perkara itu, plaintif telah bersetuju untuk membayar kadar bayaran setiap jam yang akan dikenakan oleh dua peguam kanan dan seorang peguam junior firma untuk mengendalikan kes litigasi bagi plaintif. Setelah plaintif membayar deposit, firma itu melakukan semua perkara yang perlu untuk melindungi kepentingan plaintif termasuk mendapatkan injunksi interim. Apabila injunksi interim diketepikan pada pendengaran inter partes, firma itu diarahkan untuk merayu terhadap keputusan itu kepada Mahkamah Rayuan ('MR'). Selepas firma itu memfailkan dokumen yang diperlukan untuk memulakan rayuan dan mendapatkan aku janji daripada semua pihak yang berkaitan untuk mengekalkan status quo saman itu sehingga rayuan dilupuskan, plaintif memutuskan untuk melantik firma peguam cara baharu untuk mengambil alih kes itu daripada firma tersebut dan mengendalikan rayuan itu. Firma itu tidak mempunyai bantahan terhadap arahan tersebut dengan syarat fi guamannya telah diselesaikan. Secara keseluruhan, firma mengeluarkan empat invois ('invois-invois') kepada plaintif untuk fi guamannya. Plaintif memfailkan saman pemula ini ('SP') bagi mendapatkan perintah bahawa invois-invois itu dikenakan cukai oleh mahkamah menurut s 126 Akta Profesion Undang-Undang 1976 ('APUU') atas alasan bahawa, antara lain: (a) jumlah di bawah invois-invois itu tidak munasabah dan terlalu tinggi; (b) invois-invois tidak memberikan maklumat yang mencukupi untuk plaintif memahami perkhidmatan yang diberikan; and (c) terma-terma perlantikan firma menyebut kadar setiap jam untuk tiga peguam firma itu, tetapi invois-invois termasuk kadar setiap jam kepada enam orang lagi yang tidak pernah dipersetujui oleh plaintif. Firma itu membantah pemfailan SP itu atas alasan bahawa: (i) invois-invois dikeluarkan menurut perjanjian fi di bawah s 116 APUU dan oleh itu, menurut s 117(3) APUU, invois-invois itu tidak tertakluk kepada cukai; (ii) invois pertama dan kedua dihantar kepada plaintif lebih daripada enam bulan sebelum SP difailkan, oleh itu, menurut s 126 APUU, plaintif tidak boleh mendapatkan perintah untuk cukai invois-invois tersebut kerana perkara yang telah ditentukan; (iii) fi yang dikenakan di dalam invois-invois telah diperincikan dengan secukupnya dan munasabah atau seimbang dengan kerja yang dilakukan; dan (iv) plaintif tidak pernah pada bila-bila masa membantah yuran guaman yang dinyatakan dalam invois-invois.

Diputuskan, menolak SP:

(1) Terma-terma perlantikan menunjukkan bahawa hanya tiga peguam firma yang dikenal pasti akan mengenakan kadar setiap jam untuk kerja mereka. Invois-invois, bagaimanapun, memasukkan peguam lain yang mengenakan kadar setiap jam mereka sendiri. Hal ini tidak dipersetujui

oleh plaintif. Ianya adalah pelanggaran yang jelas terhadap terma-terma perlantikan. Selanjutnya dan yang paling penting, terma-terma perlantikan yang digunakan oleh firma bukanlah keseluruhan perjanjian antara pihak-pihak mengenai fi guaman. Oleh itu, s 116 dibaca dengan s 117(3) APUU tidak terpakai. Invois-invois tersebut dibuat tidak berdasarkan sebarang perjanjian yang jelas mengenai fi guaman antara pihak-pihak (lihat perenggan 21–22).

(2) Plaintif telah memberikan alasan yang sangat baik untuk mahkamah melanjutkan masa di bawah s 128 APUU untuk membolehkan invois pertama dan kedua dikenakan cukai. Invois-invois itu saling berkaitan untuk kerja berterusan yang dilakukan hasil kes litigasi yang sama dan kerja yang dilakukan untuk invois kedua dan seterusnya adalah berkaitan dengan injunksi interim yang ditolak oleh Mahkamah Tinggi dan rayuan dan permohonan-permohonan yang berkaitan dengannya. Oleh itu, tempoh enam bulan sepatutnya berjalan dari tarikh invois akhir dihantar kepada plaintif (lihat perenggan 26).

(3) Pada masa yang material, Mahkamah Rayuan telah menetapkan tarikh untuk hujahan bertulis difailkan. Fokus plaintif adalah untuk menyelesaikan semua pembayaran tanpa berlengah-lengah supaya peguam cara barunya boleh bersedia untuk rayuan itu. Pembayaran itu dibuat tanpa bantahan supaya fail dan semua kertas kausa dan dokumen boleh dipindahkan kepada peguam cara baharu tanpa berlengah-lengah supaya mereka boleh bekerja, menyelesaikan rekod rayuan dan perkara yang berkaitan dengannya termasuk persediaan untuk rayuan. Hal ini merupakan alasan yang sangat baik untuk tempoh masa dilanjutkan (lihat perenggan 27).

(4) Mahkamah ini mendapati bahawa invois-invois tersebut sangat terperinci di mana setiap perkara kerja disenaraikan termasuk masa yang telah diluangkan oleh setiap peguam untuk setiap perkara kerja serta jumlah tertentu yang ditanggung untuk pembayaran dan cukai. Invois-invois tersebut juga mematuhi kaedah 11 Peraturan Profesion Undang-Undang (Amalan dan Etika) 1978. Setelah mempertimbangkan kedudukan istimewa dan kekananan peguam dari firma tersebut yang hadir untuk plaintif, perkara penting undang-undang yang telah dibangkitkan dan jumlah kerja yang besar yang dilakukan dalam tempoh yang sangat singkat, mahkamah tidak dapat mengatakan bahawa fi guaman yang dikenakan oleh firma itu terlalu tinggi atau tidak munasabah. Atas sebab itu sahaja, SP plaintif telah ditolak (lihat perenggan 28–29).]

Cases referred to

Lua & Mansor (suing as a firm) v Tan Ah Kim [2017] 3 MLJ 371; [2017] 2 CLJ 175, CA (distd)

Perusahaan Petanda Bintang Sdn Bhd v Asbir, Hira Singh & Co [1995] 2 MLJ 455; [1995] 3 CLJ 234, HC (refd)
SP Veloo & Co v Affin Bank Bhd [2017] MLJU 1042; [2017] 1 LNS 1041, CA (refd)
Tan Tek Sin & Anor v Tetuan Nora Hayati & Assoc (sued as a firm) [2015] 2 MLJ 1; [2015] 1 CLJ 89, CA (refd)
Tetuan Azim, Tunku Farik & Wong v Tetuan Ong Partnership [2021] 6 MLJ 464; [2021] 10 CLJ 258, CA (refd)

Legislation referred to

Capital Markets and Services Act 2007 s 360
Courts of Judicature Act 1964 s 44
Legal Profession (Practice and Etiquette) Rules 1978 r 11
Legal Profession Act 1976 ss 116, 117(3), 126, 126(1), 128(1)

So Chien Hao (with Fatin Izyan bt Muhamad Fadzil) (Zailan and Co) for the plaintiff.
Alan Adrian Gomez (with Khoo Sher Rynn) (Tommy Thomas) for the defendant.

Amarjeet Singh J:

INTRODUCTION

[1] On 6 April 2023, I dismissed the instant originating summons brought by Empire Holdings Ltd, the plaintiff, against its former legal firm, Messrs Tommy Thomas (referred to either as 'Messrs Tommy Thomas' or 'the firm'). The plaintiff had sought the following orders against the firm:

(a) that invoices No B202100746 dated 9 July 2021 ('first invoice'); No B202100760 dated 13 August 2021 ('second invoice'); No B202100774 dated 30 September 2021 (third invoice'); and No B202100779 dated 21 October 2021 ('the final invoice') delivered to the plaintiff by Messrs Tommy Thomas for legal services rendered, be taxed by the Registrar of this court under s 126 of the Legal Profession Act 1976 ('the LPA'), and

(b) for the purpose of taxation, the plaintiff be furnished with all documents referred to in the said invoices save for the cause papers that have been filed in this court vide Civil Action No WA-22NCC-295–07 of 2021.

[2] The invoices will be collectively referred to as the 'impugned invoices' unless otherwise stated.

[3] The reasons for my decision are as follows.

A THE SALIENT FACTS

[4] On 29 June 2021, the plaintiff engaged the services of Messrs Tommy Thomas. The dispute concerned the purported sale of the plaintiffs shares in Turiya Bhd by Ithmaar Development Co Ltd and Ithmaar Bank BSC (collectively, 'Ithmaar') to MAA Group Bhd ('MAA'). The defendant says, that in recognition of the importance, complexity and urgency of the suit the plaintiff agreed to have Tommy Thomas and Sitpah Selvaratnam, advocates and solicitors of the firm, to act as counsel with agreed hourly rates of both counsel and hourly rate of a junior associate to assist them. A deposit of RM300,000 was paid as initial deposit for the firm to begin acting for the plaintiff.

[5] Upon receipt of the deposit, Messrs Tommy Thomas commenced work on an urgent basis filing and filed a writ and statement of claim in this court vide Civil Action No WA-22NCC-295–07 of 2021 and moved this court for an urgent interim injunction against Ithmaar and MAA. The writ and statement of claim running into 57 pages was filed within four days on third invoice July 2021 against Ithmaar, MAA, Turiya Bhd and Tunku Yaacob. At the same time, the application for interim injunction supported by an affidavit predicated on a certificate of urgency was filed. The writ action, according to Messrs Tommy Thomas involved a novel issue, namely, s 360 of the Capital Markets and Services Act 2007 ('the CMSA') to restrain and potentially unwind Ithmaar, MAA and Tunku Yaacob's contraventions of the CMSA and the Take Over Code in the course of the sale of shares in Turiya Bhd. As the injunction application was sought, after the purported sale and transfer of the shares were completed, there were also the additional issues on commercial and banking law involving the doctrine of equity redemption.

[6] On 7 July 2021, Messrs Tommy Thomas were successful in obtaining an ad interim injunction which restrained:

(a) the MMA from selling or transferring or pledging or exercising any rights or howsoever dealing with the Turiya shares ('the said shares');

(b) MAA from taking any steps whatsoever under the notice of unconditional mandatory take-over offer; and

(c) Ithmaar from exercising any right of sale, disposal, assignment and/or enforcement over all other shares and/or assets taken as security for the facility granted to the plaintiff.

In this way, Messrs Tommy Thomas had used its expertise which successfully resulted in the protection of the plaintiffs interest pending the inter partes hearing of the injunction application.

[7] The defendant said, that from 7 July 2021 until the hearing of the inter partes injunction, 17 affidavits were filed and exchanged. With MAA and Tunku Yaacob filing additional applications for security for costs. So, in a span of less than one month, Messrs Tommy Thomas had filed six affidavits for the injunction application and resisted two applications for security for costs and had canvassed 33 authorities for the interim injunction application — case-laws and authorities from Malaysia, England and Australia.

[8] The hearing of the injunction application and security for costs applications that were fixed for hearing on 5 August 2021 was adjourned to 21 September 2021 at the request of Ithmaar. During the adjournment to the new hearing date for the stated applications, a further 12 affidavits were exchanged on the injunction application and two new applications were filed by Ithmaar for security for costs, fortification of damages and to set aside the injunction application. Messrs Tommy Thomas also filed a 28-page supplementary written submission with 27 additional case-laws and authorities bound in a bundle of authorities.

[9] Thereafter, Messrs Tommy Thomas offered, on behalf of the plaintiff, certain amounts to Ithmaar, MAA and Tunku Yaacob to satisfy the security for costs and fortification of damages until the disposal of the trial of the action at the High Court. For this purpose, the plaintiff had, on advice, remitted RM1.5m to Messrs Tommy Thomas to fulfill the offer that was made.

[10] On 21 September 2021, the High Court made an order granting security for costs in the sum of RM350,000 for each Ithmaar, MAA and Tunku Yaacob. This came up to RM1,050,000 while according to Messrs Tommy Thomas the remaining RM450,000 was held towards the legal fees of Messrs Tommy Thomas. This RM450,000 was set off by Messrs Tommy Thomas against the sums due under the second invoice and the third invoice and 'the invoices to be issued' to the plaintiff.

[11] On 27 September 2021, the High Court on hearing the parties inter partes dismissed the injunction application. Following the dismissal, the plaintiff instructed Messrs Tommy Thomas to file an appeal against the decision to dismiss the interim injunction to the Court of Appeal. The notices of appeal were filed in the High Court and served on the relevant parties as required by the rules of court. This was immediately followed up with an application for interim preservation under s 44 of the Courts of Judicature Act 1964 also predicated on a certificate of urgency. The purpose according to the affidavit in support was to maintain the status quo pending the disposal of the appeal in the Court of Appeal otherwise known as an Erinford injunction. The application for an Erinford injunction led to the filing of seven affidavits, totaling 18 volumes, and four sets of written submissions together with 13

volumes of Bundle of Authorities by the parties in the appeal.

[12] Meanwhile, prior to the Erinford injunction application hearing on 30 September 2021, Messrs Tommy Thomas managed to secure undertakings from counsel for MAA and Ithmaar to preserve the status quo pending hearing of the said application. Then, at the hearing of the Erinford injunction application, an undertaking was given by MAA that it would not sell, pledge or encumber the said shares, not to change Turiya Bhd's board of directors and not to proceed with the notice of unconditional mandatory take-over offer. Due to the above undertakings and Itmaar's undertaking not to dispose of the shares charged and/or pledged by the plaintiff to Ithmaar pending the disposal of the appeal, the *Erinford injunction* was effectively rendered otiose. In the circumstances, the Court of Appeal dismissed the Erinford injunction. On achieving this result, it was said that from third invoice July 2021 to 21 October 2021 while in the firm's capable hands, the plaintiff's interests were protected by the ad interim injunction, and the successful succoring of the undertakings and orders recorded thereat.

[13] On 20 October 2021, Messrs Tommy Thomas received a letter informing that Messrs Zailan & Co had been appointed by the plaintiff as its new solicitors. The firm informed the new solicitors that they had no objection subject to the payment of the legal fees. At that point in time, Messrs Tommy Thomas alleged that part of the second invoice and the entire third invoice remained unpaid. Also, at that point in time, the pleadings at the High Court were yet to be closed and the index for the record of appeal was yet to be settled between the respondents for the appeal against the dismissal of the interim injunction by the High Court. Further, parties were directed by the Court of Appeal to file their respective submissions by firstNovember 2021.

[14] The plaintiff said that in the letter dated 9 July 2021, acknowledging receipt of the deposit, the firm had thanked the plaintiff for the deposit of RM300,000 and said, 'as informed previously, the deposit will be set off against our final invoice in due course'. The plaintiff said that, this statement gave the plaintiff the impression that the balance sum will be sufficient to set off the other interim invoices till the issuance of the final invoice.

[15] Eventually, Messrs Tommy Thomas raised the final invoice. In it, there was set off an amount from the amount of RM750,000 remitted by the plaintiff to the former's 'client account' against the remaining part of the second invoice, third invoice and final invoice. Upon being advised that there was a balance deposit of RM189,409.34, the plaintiff requested the amount to be transferred to Messrs Zailan & Co. This transfer took place after Messrs Tommy Thomas received the notice of change of solicitors filed by Messrs Zailan & Co.

[16] On 17 February 2022, the plaintiff filed the instant originating under s 126 of the LPA seeking the abovementioned reliefs.

THE GROUNDS ADVANCED FOR THE RELIEFS SOUGHT

[17] The grounds advanced for the reliefs sought by the plaintiff in the originating summons are as follows:

(a) the amount of RM1,111,641.44 charged in the impugned invoices were unreasonable and exorbitant for only four months legal services rendered;

(b) the information contained in the impugned invoices do not contain adequate information for the plaintiff to understand the services rendered;

(c) the terms of engagement mentioned the hourly rates for three lawyers from the firm; namely:

(i) Tommy Thomas at the rate of RM5,500 an hour;

(ii) Sitpah Selvaratnam at the rate of RM3,000 an hour; and

(iii) Sieh Ching Joe at the rate of RM300 an hour,

but the defendant's impugned invoices included another two individuals with the initials 'GN' and 'ML' at the rate of RM1,500 and RM800 an hour respectively. Further, for the second invoice had included the following other individuals with the initials 'MY', 'KSR', 'TW' and 'GN' with an hourly rate of RM1,000, RM200, RM300 and RM1,500 respectively. The complaint was that the defendant had unilaterally changed the manpower and rate as agreed in the terms of engagement;

(d) the defendant introduced the term 'unit' in the invoices as the basis of calculating the hourly rate which term was not explained or made known and a term that was not mentioned in the terms of engagement to the plaintiff. The complaint was that the firm cannot put the plaintiff, its client, in the dark and to guess what the term 'unit' meant; and

(e) the defendant further introduced the term 'time summary for tax invoice'. It was contended that the word 'summary' itself indicates that the details of the sum charged are not stated for the plaintiff to know how the defendant charged the sum stated in the impugned invoices.

GROUNDS FOR DISMISSING THE APPLICATION

[18] Messrs Tommy Thomas opposed the application for the reliefs sought by the plaintiff on the following grounds:

(a) the impugned invoices were issued pursuant to agreed fees under s 116 of the LPA and are accordingly not subject to taxation pursuant to s 117(3) of the LPA;

(b) the first invoice and the second invoice were issued and delivered to the plaintiff more than six months before the application to tax was made and therefore was time barred under s 126 of the LPA;

(c) the fees charged as reflected in the impugned invoices were adequately itemised, not unreasonable or disproportionate to the legal work expended by the defendant; and

(d) the plaintiff did not at any time protest against the legal fees stated in the impugned invoices.

DECISION OF THE COURT

Whether the fees sought were premised on a fees agreement

[19] Counsel on behalf of Messrs Tommy Thomas contended that the impugned invoices were issued based on a fee's agreement. The terms of the fee's agreement are stated in the terms of engagement dated 29 June 2021 and therefore constituted an agreement under s 116 of the LPA which read:

> (1) Subject to the provisions of any written law, an advocate and solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or any part of his costs in respect of contentious business done or to be done by such advocate and solicitor, either by a gross sum, or otherwise, and either at the same rate or at a greater or lesser rate than the rate at which he would otherwise be entitled to be remunerated.
>
> (2) Every such agreement shall be signed by the client and shall be subject to this Part.

[20] Being an agreement under s 116 of the LPA, counsel for Messrs Tommy Thomas submitted that sub-s 117(3) of the LPA applies and as such the agreed legal fees is not subject to taxation. Subsection 117(3) of the LPA bars the legal fees from taxation in the following words:

> Subject to this Part, the costs of an advocate and solicitor in any case where there is any agreement as is referred to in Section 116, shall not be subject to taxation, nor to Section 124.

Counsel goes on to submit that based on this ground alone, the plaintiff's entire application ought to be dismissed.

[21] I am unable to agree with counsel. It is there for everyone who sees that, that part of the terms of engagement relied by counsel and reproduced for this court's benefit shows that only three lawyers of the firm were identified and the hourly fees charged for their work. Further, this merely forms part of and not the whole of the legal fees as itemised in the impugned invoices. It is clear that Messrs Tommy Thomas had included other lawyers whose hourly rate was not agreed by the plaintiff. This, in my mind is a clear breach of the terms of engagement.

[22] Further, it cannot by any stretch of imagination be said the terms of engagement forms the entire legal fees agreement for which sub-s 117(3) of the LPA would apply. The terms of engagement reproduced merely speak of the hourly rate charged for the identified lawyers of the firm. The case of *Lua & Mansor (suing as a firm) v Tan Ah Kim* [2017] 3 MLJ 371; [2017] 2 CLJ 175 relied by the firm is of no assistance. The principle in that case is that there must be a clear agreement made between the parties on fees whether by letter of appointment or otherwise. Further in that case, the plaintiff did not dispute the agreement on the fees that were clearly agreed between the parties. In the instant case, as shown above, Messrs Tommy Thomas had breached the agreement on the identified lawyers and the hourly rate for their services with additional lawyers with hourly rates not agreed to at all. Further, and most crucially the agreement is not the entire agreement on the legal fees. In the circumstances, I hold that s 116 read with sub-s 117(3) of the LPA does not apply based on the circumstances of the instant case. The impugned invoices were certainly not based on any clear agreed agreement between the parties. The submission of counsel is therefore devoid of merit.

Whether the first invoice and second invoices were time barred

[23] Counsel next submitted that the plaintiffs application is time barred in respect of the first invoice and second invoice. The plaintiff relies on sub-s 126(1) of the LPA which read:

> An order for the taxation of a bill of costs delivered by any advocate and solicitor may be obtained by a petition as a matter of course by the party chargeable therewith, or by any person liable to pay the cost either to the party chargeable or to the advocate and solicitor, at any time within six months from the delivery of the bill, or, by the advocate and solicitor after the expiration of one calendar month, and within a year from, the delivery.

And sub-s 128(1) of the LPA which provide as follows:

> After the expiration of six months from the delivery of a bill of costs, or after payment of the bill of costs, no order shall be made for taxation of a solicitor's bill of costs, except upon notice to the advocates and solicitors and under special circumstances to be proved to the satisfaction of the Court.

[24] Counsel submitted that the first invoice and the second invoice were delivered on 9 July 2021 and 13 August 2021 respectively and that the six months period from date of such delivery was exceeded when the instant originating summons was filed on 17 February 2022. As such, the time period in sub-s 126(1) of the LPA had been exceeded and further there were no special circumstances shown warranting taxation of the bills of costs beyond the six-month period as provided under sub-s 128(1) of the LPA. The case of *Tetuan Azim, Tunku Farik & Wong v Tetuan Ong Partnership* [2021] 6 MLJ 464; [2021] 10 CLJ 258 was cited for the meaning of 'special circumstances' which appear in the following paragraph of the judgment:

> [27] We shall consider now whether the two reasons given by the learned High Court Judge constitute special circumstances under s 128(1) to extend time. We are mindful that 'special circumstances' is not defined in s 128. *But, we should think that an extraordinarily good reason must be furnished to the court to extend time.* The learned High Court judge said that the professional charges of RM12,720 (inclusive of GST) was not itemised with details. In our view, this is not a case where a large lump fee was issued without any details or explanation. An explanation and details were given in the bill of costs that were not considered by the learned High Court judge. At the bottom of the bill there is a 'Schedule of Workdone'. It reads as follows: ... (Emphasis added.)

[25] Counsel submitted that no exceptional circumstances, in that, there was no extraordinarily good reason furnished for this court to extend time. Counsel for the plaintiff submitted that firstly, only two of the four invoices were dealt with. In other words, the third invoice and the final invoice were not time barred. Secondly, it was submitted that there were special circumstances under sub-s 128(1) of the LPA for time to be extended by this court. The cases of *Perusahaan Petanda Bintang Sdn Bhd v Asbir, Hira Singh & Co* [1995] 2 MLJ 455; [1995] 3 CLJ 234, *SP Veloo & Co v Affin Bank Bhd* [2017] MLJU 1042; [2017] 1 LNS 1041, and *Tan Tek Sin & Anor v Tetuan Nora Hayati & Assoc (sued as a firm)* [2015] 2 MLJ 1; [2015] 1 CLJ 89 were cited.

[26] I am satisfied that there are exceptional circumstances, in that there is an extraordinarily good reason furnished by the plaintiff to extend time. I find that the invoices are interconnected for continuous work done arising from the same dispute and the work done for the second invoice onwards was really in relation to the interim injunction that was dismissed by the High Court and the appeal and the connecting applications arising therefrom. Thus, the six months ought to run from the date the final invoice was delivered to the plaintiff. The third invoice and fouth invoices are not time barred.

[27] At the material time, Court of Appeal had already set the date for written submissions to be filed. The plaintiffs focus was to settle all payments quickly without delay for new counsel to prepare for the appeal. The payment

was already made by way of set off without objection then so as to avoid Messrs Tommy Thomas to exercise lien over the case file and all cause papers and documents so that the plaintiffs new solicitors could get down to work, settle the record of appeal and the matters connected therewith including preparing for the appeal. This in my mind amounted to an extraordinarily good reason to extend time. For the reasons aforesaid, I rejected the objection by Messrs Tommy Thomas on this point.

Whether the invoice was reasonable and a detailed bill of costs

[28] The plaintiff asserted that the application ought to be allowed on the basis that the impugned invoices were exorbitant, unreasonable and lacking in particulars. Messrs Tommy Thomas denied the allegation and referred this court to the impugned invoices. I found that the impugned invoices were itemised and very detailed where every item of work was listed and the time each lawyer spent on each item of work as well as the specific sums incurred in disbursements and taxes. I also found that the impugned invoices were in accordance with r 11 of the Legal Profession (Practice and Etiquette) Rules 1978 which provide as follows:

> In determining the amount of fee for litigious or contentious matters involving representation of a client in Court, it is proper to take into consideration —
>
> (a) the the time, labour and skill required;
>
> (b) the novelty and difficulty of the question involved;
>
> (c) whether acceptance of the particular employment will preclude his appearance for others of which he has a reasonable expectation;
>
> (d) the customary charges of the profession for similar services,
>
> (e) the amount in controversy;
>
> (f) the benefit resulting to the client for the services;
>
> (g) the character of the employment-whether casual or for an established client; and
>
> (h) the special position or seniority of the particularly advocate and solicitor.

[29] Having considered the special position and seniority of counsel from the firm who appeared for the plaintiff, the novel points of law said to have been raised, the tremendous amount of work in an extremely short period of time work done I am unable to say that the legal fees charged is exorbitant or unreasonable in the circumstances. For this reason alone, the application was dismissed.

OS dismissed.

Reported by Ashok Kumar